

**Redacted Version of  
Document Sought to be Sealed**

**Declaration of Mark Mao in Support of  
Plaintiffs' Supplemental Sanctions  
Motion Pursuant to Dkt. 624**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER  
CASTILLO, and MONIQUE TRUJILLO  
individually and on behalf of all similarly  
situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 4:20-cv-03664-YGR-SVK

**DECLARATION OF MARK C. MAO IN  
SUPPORT OF PLAINTIFFS'  
SUPPLEMENTAL SANCTIONS  
MOTION**

Referral: The Honorable Susan van Keulen

**DECLARATION OF MARK C. MAO**

I, Mark C. Mao, declare as follows.

1. I am a partner with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs in this matter. I am an attorney at law duly licensed to practice before all courts of the State of California. I have personal knowledge of the matters set forth herein and am competent to testify

2. I submit this Declaration in support of Plaintiffs' Supplemental Sanctions Motion.

3. On February 26, 2022, Plaintiffs filed a request for an order to show cause why Google should not be sanctioned for discovery misconduct. Dkt. 430 ("February Sanctions Motion"). The February Sanctions Motion was initially based on Google's failure to provide discovery regarding Google's "maybe\_chrome\_incognito" Incognito-detection bit.

4. On March 10, 2022, Plaintiffs deposed Dr. Caitlin Sadowski, Google's Rule 30(b)(6) designee on Google's Incognito-detection bits. Dr. Sadowski identified two additional Incognito-detection bits, the "is\_chrome\_incognito" and "is\_chrome\_non\_incognito" bits, **utilizing an internal Google code search tool.** These were located in logs not previously identified as containing Incognito-detection bits.

5. On March 21, 2022, Plaintiffs filed a supplement to their February Sanctions Motion focused on the additional Incognito-detection bits that Dr. Sadowski identified during her deposition.

6. On April 5, 2022, Google filed its response to Plaintiffs' February Sanctions Motion (Dkt. 528), and on April 12, 2022, Plaintiffs filed their reply (Dkt. 535).

7. On April 21, 2022, the Court held an all-day in-person evidentiary hearing on Plaintiffs' February Sanctions Motion.

8. On May 20, 2022, the Court issued its order granting in part and denying in part Plaintiffs' February Sanctions Motion. Dkt. 588 ("Sanctions Order").

9. On May 31, 2022, Google filed a publicly-available proposed redacted version of the Sanctions Order. Dkt. 593-3.

1           10. As part of the Sanctions Order, Google was required to provide an attestation by  
2 May 31, 2022, that “other than the logs identified thus far as containing Incognito-detection bits,  
3 no other such logs exist.” Dkt. 593-3 at 6.

4           11. On May 31, 2022, Plaintiffs received a declaration from Google employee Martin  
5 Sramek stating that Google’s investigation started on May 23 and was “ongoing,” and that it would  
6 take another two weeks. Dkt. 614-3.

7           12. At no time did Plaintiffs agree to any extension or modification of Google’s  
8 obligation to provide the attestation responsive to the Sanctions Order. Google also did not attempt  
9 to justify why it needed an extension to investigate the existence of logs that Plaintiffs had been  
10 seeking to identify for many months, and that the Court specifically inquired about during the  
11 April 21, 2022 sanctions hearing.

12           13. On June 14, 2022, Plaintiffs received a declaration from Mr. Sramek identifying  
13 the [REDACTED] additional logs containing the three previously-identified Incognito-detection bits.

14           14. Prior to June 14, 2022, Google had not identified any of those [REDACTED] additional logs as  
15 containing Incognito-detection bits.

16           15. Thereafter, my colleagues and I contacted counsel for Google to seek additional  
17 information concerning these newly-revealed [REDACTED] additional logs.

18           16. Google has refused to provide any details aside from those contained in the June  
19 14, 2022 Sramek Declaration.

20           17. These attempts to meet and confer also involved Google’s preservation obligations  
21 related to the [REDACTED] additional logs, and Google refused to respond to that preservation inquiry.

22           18. Google’s counsel has also yet to confirm when they first became aware of the  
23 Incognito detection bits.

24           19. Attached hereto as **Exhibit A** are Plaintiffs’ proposed preclusion orders and jury  
25 instructions.

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed this 4th day of August, 2022, at San Francisco, California.

3 /s/ Mark C. Mao  
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